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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Richard Seeborg, Judge Presiding

MICHAEL KATZ-LACABE, and DR. )  
JENNIFER GOLBECK, on behalf of )  
themselves and all others )  
similarly situated, )

Plaintiffs, )

VS. )

NO. 3:22-cv-04792-RS

ORACLE AMERICA, INC., a )  
corporation organized under the )  
laws of the State of Delaware, )

Defendant. )  
\_\_\_\_\_ )

San Francisco, California  
Thursday, November 14, 2024

**TRANSCRIPT OF PROCEEDINGS**

**APPEARANCES:**

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(APPEARANCES CONTINUED ON FOLLOWING PAGE)

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**BY: TIFFANY CHEUNG, ATTORNEY AT LAW**

Thursday - November 14, 2024

1:38 p.m.

P R O C E E D I N G S

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**THE CLERK:** Calling Case 22-cv-4792, Katz-Lacabe vs. Oracle America.

Counsel, please come forward and state your appearances.

**MR. RUDOLPH:** Good afternoon, Your Honor. David Rudolph for the plaintiffs and the class, and with me is my colleague Michael Sobol, my colleagues Amelia Haselkorn, John Maher, and Nabila Abdallah.

**THE COURT:** Good afternoon.

**MS. CHEUNG:** Good afternoon, Your Honor. Tiffany Cheung of Morrison & Foerster on behalf of defendant Oracle America.

**THE COURT:** Good afternoon.

So this matter is on calendar for consideration of final approval of this proposed class action settlement.

I have a few items that I want to go over with you, but I thought I would start and look to the plaintiffs to comment on -- in any way they want on the various objections that we've received. The Court is aware of the fact that we've gotten, I don't know, maybe 20-some-odd objections. Most of the objections are not dissimilar from what we often see, which is "We should get more money," and then issues with respect to the fees.

1 I will say before you even jump into this that, as I've  
2 seen in the past many, many times now, sometimes those  
3 objections are premised on the idea that "The claim is an  
4 absolute winner and it's going to prevail and, therefore, I'm  
5 not getting enough money."

6 As I'm sure you will point out here, we had some  
7 preliminary motion practice, and I expressed in that, while I  
8 denied the motion, I think this case had some serious obstacles  
9 in going the distance. So it isn't a circumstance, in my mind,  
10 where it's, you know, a hundred percent sure claim that is,  
11 therefore, how we value whether or not the recovery is  
12 sufficient or not. It's we look at the recovery in the  
13 settlement context against the fact that there are significant  
14 risks to this case ending up with anything but a zero value.

15 So with that said, go ahead.

16 **MR. RUDOLPH:** Thank you, Your Honor.

17 And, first, I'd like to give you an update on the notice  
18 and claims process, and then talk about the sufficiency of the  
19 settlement, and I'll try to address some of the objections as  
20 part of that process.

21 So just to update you on the notice and claims program,  
22 the programs that Your Honor approved were successfully  
23 implemented as planned. The notice and claims programs have  
24 been comprehensive and completely fair and have been executed  
25 as the Court ordered. And Angeion, which is the claims

1 administrator here, did a really excellent job and I think  
2 that's accurately reflected in the declaration of Steven  
3 Weisbrot.

4 So to talk first about media notice --

5 **THE COURT:** One issue that we asked for you to address  
6 in our guidance, just so the record is clear, the administrator  
7 was chosen after a bidding process.

8 **MR. RUDOLPH:** He was. He was chosen after a very  
9 vigorous and aggressive bidding process. And after spending a  
10 lot of time obviously looking at the bids but talking with the  
11 claims administrators, we decided that Angeion was the best  
12 choice, and I think that the way that the notice program was  
13 implemented and the success that we've had really bears that  
14 out.

15 So with respect to the media notice, which was the primary  
16 method that satisfied Rule 23 and due process, within the  
17 notice period, the media campaign consisting of the internet  
18 notice, paid search campaign, and engagement on social media  
19 was completed. Media notice was the best way to reach class  
20 members here given the number of class members.

21 And Angeion exceeded the goal of reaching 80 percent of  
22 the target audience. In fact, they were able to reach  
23 83 percent. The target audience is actually an overinclusive  
24 number. The class estimate is 220 million people. This is  
25 83 percent of 253 million people. So it's a very large number

1 that's close to the number of class members.

2 The media notice was disseminated through major social  
3 media outlets, through paid advertising. And in addition to  
4 that, there was quite a bit of sort of natural coverage where  
5 news outlets like *U.S.A. Today* and *Associated Press* and we saw  
6 even some local news channels picked up on it, explained to  
7 class members that the settlement was real, which was a concern  
8 that some settlement class members had, and how to file a  
9 claim.

10 With respect to the e-mail notice, to stimulate claims we  
11 supplemented the direct notice -- or the e-mail notice with  
12 direct notice. The settlement agreement required Angeion to  
13 e-mail each class member for whom Oracle had an available  
14 e-mail address. That was originally a group of about  
15 800 million e-mails. That was eventually culled down mostly  
16 through sort of duplication to around 456 million e-mails.  
17 Those e-mails were sent out and then once that was done, an  
18 additional 320 million reminder e-mails were sent out.

19 And as the Weisbrot declaration states, we think this is  
20 actually the largest e-mail notice campaign that's ever taken  
21 place in any class action.

22 While a few of the objectors complained that the e-mail  
23 went to their spam and they didn't see them until closer to the  
24 deadline, as this Court has noted, courts routinely approve  
25 e-mail notice and it's inevitable that some messages will end

1 up in spam.

2 And, similarly, with respect to the class members who say  
3 they didn't see the notice until closer to the deadline's  
4 period, Angeion looked at those class members who were making  
5 those objections and was able to determine that they were  
6 actually responding to the reminder e-mails that were  
7 specifically designed to go out closer to the deadline to  
8 stimulate claims.

9 With respect to the claims process itself, the claims  
10 process operated smoothly, and we're happy to report that  
11 approximately 3.2 million class members were able to file  
12 claims.

13 **THE COURT:** Which is a claims rate of about what?  
14 1.4?

15 **MR. RUDOLPH:** It's 1.47.

16 **THE COURT:** Okay. How does that compare with  
17 comparable -- that seems to be somewhat of a low claims rate.  
18 You're saying in the papers to me it's actually a robust claims  
19 rate. So what do you want to say about that?

20 **MR. RUDOLPH:** It's well within line of what we see in  
21 privacy cases. It's frequently in the 1 to 2 percent range. I  
22 believe the *Plaid* case, which is discussed in the Weisbrot  
23 declaration, which was similarly situated in the respect that  
24 it was a plaintiff -- I'm sorry -- defendant that the class  
25 members didn't have privity with and weren't directly, you

1 know, interacting with. So that fact would suppress claims  
2 rate with -- in comparison to a case like -- that involves  
3 Facebook or Google where people know the company, know that  
4 they're interacting with them.

5 So this is really right within the range of what was  
6 predicted. We predicted 1.5 to 2.5. So 1.47 is within a  
7 fraction of the claims rate that the claims administrator  
8 predicted.

9 And in light of that, we're able to estimate that each  
10 class member will then approximately -- will receive  
11 approximately \$25, which is at the high end of what we had  
12 potentially estimated. And this is really meaningful  
13 compensation for those who wanted to participate in this case  
14 in light of the nature of the claims and the risks involved.

15 And --

16 **THE COURT:** You asked me a kind of value the  
17 injunctive relief, and I'm having a little trouble with that  
18 because it seems -- and I know that there may be some  
19 disconnect here between the parties, but from the injunctive  
20 standpoint, what did you really accomplish? Because my  
21 understanding was that Oracle was shutting it down anyway.

22 **MR. RUDOLPH:** Right. So the injunctive relief had two  
23 parts. It had a change to the way that Oracle's data  
24 collection practices operated. So they needed to change their  
25 data -- the "Core Tag" so that it wouldn't be collecting



1 referred URLs or information entered into forms. So that's  
2 actually a major systematic change in the way that Oracle was  
3 collecting data from class members.

4 And it also had to institute a --

5 **THE COURT:** Your position is the lawsuit prompted  
6 this?

7 **MR. RUDOLPH:** We think it did, and we think the  
8 settlement and the injunctive relief may have led to that -- to  
9 that cessation. It was a major change to the way the business  
10 had to operate, and a month later the other shoe dropped, so to  
11 speak, and the company --

12 **THE COURT:** Let me ask Ms. Cheung. I know this is  
13 perhaps a point of contention. I'm not sure at the end of the  
14 day it's going to be all that important in light of the fact  
15 that there is a monetary aspect to this as well, but do you  
16 have a view on whether or not injunctive relief was achieved  
17 here?

18 **MS. CHEUNG:** Right. And, Your Honor, as we stated in  
19 our papers, we do dispute that this litigation caused Oracle  
20 Advertising to decide to shut down its business. Obviously the  
21 fact that it was announced shortly after the settlement was  
22 announced is -- indicates that it wasn't prompted by anything  
23 that happened in this litigation because, of course, a decision  
24 like that must start and discussions must start well in advance  
25 of the public announcement.

1       So although the public announcement occurred shortly after  
2       the settlement was announced, these discussions obviously had  
3       started well in advance. And as publicly reported, the reason  
4       for the decision to shut down the business was based on failing  
5       revenues.

6               **THE COURT:** You're sort of on the horns of a dilemma  
7       though, because you're a proponent of this settlement and  
8       presumably would be in favor of providing as high a value on  
9       the settlement as you can. So that -- but even with that said,  
10      your position is -- is your position essentially that I  
11      shouldn't place any value on the -- what the plaintiffs  
12      identify as injunctive relief that they have obtained?

13              **MS. CHEUNG:** Well, the nonmonetary relief provision is  
14      certainly a part of the settlement agreement and it has been --  
15      it is included in the settlement agreement. In terms of the  
16      value and what is provided to the class, we do continue to  
17      believe that it's fair in light of the monetary component to  
18      the settlement. As Your Honor indicated, that monetary value  
19      is significant in light of the many challenges and obstacles  
20      the plaintiffs would have had in this case achieving what would  
21      be an all-out win.

22              There are many hurdles to achieving that; and in light of  
23      that, the significant monetary value of the settlement is  
24      far -- is beyond fair.

25              **THE COURT:** Okay. Let's go back to plaintiffs'

1 counsel. Go ahead.

2 **MR. RUDOLPH:** Yeah, there's two points I'd like to  
3 respond to there.

4 The first is just to point out the injunctive relief will  
5 be in place in the event that Oracle decides to start this  
6 conduct again. So there is that prohibition. And there will  
7 be the auditing provision as well in the event Oracle decides  
8 to start this up again.

9 And the other issue is, as we mentioned in our papers, we  
10 have it's not direct evidence but there's a fair amount of  
11 reporting suggesting that the privacy concerns were actually a  
12 major driver in Oracle's decision to shut down the business,  
13 and this case was repeatedly noted as sort of a major avatar of  
14 that concern.

15 So returning to the claims process, Angeion and class  
16 counsel -- I'm just sort of resituating us. There were some  
17 complaints about, you know, inability to access the website or  
18 issues with submitting the claim form, and Angeion and class  
19 counsel, as we state in our declaration, spent a lot of time  
20 and effort trying to make sure that every class member who  
21 reached out, had an issue, had that addressed.

22 **THE COURT:** Angeion has been the administrator on  
23 other data privacy cases.

24 **MR. RUDOLPH:** That's correct.

25 **THE COURT:** And that's what the declaration indicates.

1 And did they follow the same protocol as they did in prior data  
2 privacy cases in terms of notices and claims processing and the  
3 like?

4 **MR. RUDOLPH:** I can't speak to that. Mr. Weisbrot is  
5 available if you're interested.

6 **THE COURT:** No, that's all right.

7 **MR. RUDOLPH:** But it's my understanding that this was  
8 a very, very robust package, and we wanted to ensure that it  
9 was as good as any privacy class action that's ever been  
10 noticed.

11 Finally, with respect to opt outs, there were 487 timely  
12 opt outs showing there was a fair and reasonable process for  
13 those who wished to exclude themselves.

14 At preliminary approval, the Court inquired about having  
15 exclusions versus U.S. mail. We did proceed with that approved  
16 process as the best method to suppress fraud; and, in fact, a  
17 decision out of the Eastern District of Michigan in just the  
18 last few weeks collected cases from across the country  
19 requiring this process of a wet signature and having it mailed  
20 in because it's a very common and effective way of handling opt  
21 outs.

22 I'll just give you a cite for that real quick. It's the  
23 *In Re Chevy Bolt EV Battery Litigation* in the Eastern District  
24 of Michigan. The case number is 20-cv-13256. A Docket  
25 Number 177 issued on December 28th.

1 And so we think the number of opt outs and the fact that  
2 there were no objections to that particular process speaks to  
3 its fairness.

4 **THE COURT:** Let me direct your attention for a moment  
5 to the incentive awards. The \$10,000 incentive award is on the  
6 high side. Your explanation to me was that the particular  
7 named plaintiffs had personal information that was on the  
8 record, although that was under seal in part, but -- and then  
9 they submitted some of their devices to some forensic analysis  
10 and the like. Is that the basis on which you think it should  
11 be a high-end incentive award?

12 **MR. RUDOLPH:** That's part of the basis. These were  
13 very active plaintiffs who were deeply involved in the process,  
14 the litigation process, and understanding the claims and going  
15 through with discovery in the way that it needed to be.

16 They did have to subject all of their devices to complete  
17 forensic imaging, which is essentially taking all of their  
18 information, all of their personal information, all of their  
19 browsing history, and a large portion of that was then made  
20 available to Oracle for examination.

21 So this was really -- this was part of what the case was  
22 about was, you know, what people did in private and how that  
23 was being collected, and that was made available to Oracle; and  
24 it was a major concern on behalf of the plaintiffs that, you  
25 know, this was an invasive process.

1       There was that, and there was also the question of, you  
2 know, given the sort of paradox that they have some notoriety  
3 around being privacy advocates, that Dr. Golbeck, for example,  
4 had -- is subject to harassment, unfortunately, and was  
5 concerned that if some of the information that was at issue in  
6 discovery here was put out in public, that it could exacerbate  
7 that.

8       So we think these were courageous plaintiffs who really  
9 went an extra step to prosecute these very comprehensive claims  
10 about, you know, making available every aspect of their lives  
11 that has some sort of digital receipt available to -- to the  
12 defendant and ultimately potentially to the Court.

13       **THE COURT:** So just to recap, it's a nonreversionary  
14 settlement proposal, \$115 million, as you say 3.2 million  
15 claims.

16       Anything else you want to talk about about the nonattorney  
17 fee part of this? And then I want to turn to the attorneys'  
18 fee issue.

19       **MR. RUDOLPH:** Just briefly on the sufficiency of the  
20 settlement, we -- as you noted at the beginning, we faced a  
21 huge amount of uncertainty here, both on proving up our claims  
22 on the merits and on damages. Oracle in its filing runs  
23 through the litany of issues.

24       There was risks around showing consent on a class-wide  
25 basis. There are technical challenges to the wiretapping

1 claims, and there's a question of whether jurors would  
2 ultimately even find this conduct highly offensive.

3 And damages here, this is not the kind of case where there  
4 are out-of-pocket damages and there's some sort of  
5 ascertainable sum certain that can be looked to as sort of the  
6 ultimate recovery.

7 No privacy case of this type has ever gone to trial; and  
8 while we would argue that nominal damages shouldn't be the  
9 limit, it could potentially be and we could be looking at a  
10 situation where class members get a dollar a piece, and we were  
11 able --

12 **THE COURT:** That's as opposed to some -- have some of  
13 the data breach cases gone to trial?

14 **MR. RUDOLPH:** Right. Exactly. Exactly. There were  
15 some class members who seemed to be under the impression that  
16 there was some malicious actor who was engaged in identity  
17 theft and that they needed to be compensated for that.

18 But this is -- these are really pure privacy harms, and  
19 how to -- how those are going to be evaluated and how the value  
20 of them is going to be determined at trial is still a complete  
21 unknown.

22 And just to reiterate, the 115 million is really -- it's a  
23 very substantial sum. We believe it's among the top 10 of any  
24 privacy class action. It appears to be the third largest of  
25 any nondata breach class action, the first two involved

1 Facebook, and we think it's the largest where the defendant  
2 wasn't in privity with the -- with the plaintiff.

3 And then one further point is that we pointed out a number  
4 of comparators in our papers, both in the preliminary approval  
5 and at final approval, showing the ranges that class members  
6 have obtained, and \$25 is really sort of smack in the middle of  
7 that range. They go from as high as, you know, 35 to \$40 in  
8 some instances down to \$7.

9 And in the *Brooks vs. Thomson Reuters* case in front of  
10 Judge Chen that just went through preliminary approval, the  
11 estimated range there -- which involves a data broker and a  
12 sort of similar profile, the estimated range of payments was 19  
13 to \$48. So we really think this is a very strong settlement  
14 that's supported by not just looking at the risks but looking  
15 at comparators and seeing how these cases are usually resolved.

16 **THE COURT:** Before we move on to attorneys' fees, we,  
17 as I think I've mentioned, not in this case, in other cases  
18 where you've all been involved, we as a district want to really  
19 be more proactive on the post-distribution accounting analysis.  
20 So there is a form now that we have, and it -- I have to go  
21 back and look if you provided for that in the agreement. But  
22 one way or the other, we want you to do it because we're trying  
23 to get, you know, a handle on things like claims rates and  
24 other things.

25 **MR. RUDOLPH:** It is explicitly called out in the



1 proposed order that we provided to Your Honor.

2 **THE COURT:** Okay. So let's talk about the fees.

3 You are asking for the Ninth Circuit benchmark, as I  
4 understand it, 25 percent. That would be a 2.9 multiplier, I  
5 think, if I read that correctly.

6 **MR. RUDOLPH:** That's correct.

7 **THE COURT:** In this case, you -- it's gone on for a  
8 while. We certainly had an active motion practice, a lot of  
9 documentary discovery, as I understand it, didn't get into -- I  
10 think you had one deposition or something.

11 **MR. RUDOLPH:** That's correct.

12 **THE COURT:** So, you know, you start out with the  
13 benefit of the benchmark and that's, you know, our starting  
14 point.

15 Why in this case do you think a multiplier is -- from the  
16 lodestar is warranted?

17 **MR. RUDOLPH:** Well, first, because of the nature of  
18 the result itself. This is -- we think this is really a  
19 phenomenal settlement that delivered a huge amount of value to  
20 class members. It is the largest of any wiretap claim that --  
21 largest settlement for any wiretap claim that we're aware of.

22 And the risks for this case were particularly acute  
23 because it was such a novel theory that has never -- never been  
24 litigated before. We spent two years working up the theory,  
25 working with experts, working with legal scholars trying to

1 develop theories that, you know, tracked in real time the  
2 development of law and providing the strongest case we could  
3 for these claims, and we were able to get them past several  
4 motions to dismiss that were --

5 **THE COURT:** In fairness, though, as you will no doubt  
6 point out to me now, not without a lot of effort because I  
7 expressed a lot of concern about whether or not these were  
8 viable claims.

9 **MR. RUDOLPH:** That's right. We spent an enormous  
10 amount of time doing the sort of backend to make sure that this  
11 would get to a point where we could fully litigate the claims.

12 And, you know, again just in terms of the risk profile and  
13 the novelty of the claims, no other law firm filed a case, a  
14 similar case. There were no copycat cases. We litigated this  
15 entirely in-house with essentially the group of lawyers that  
16 you see behind me. And that's very unusual, very unusual in  
17 this space; and, in fact, the 15 comparators that we pointed  
18 you to at preliminary approval, not a single one of them  
19 involved only one law firm.

20 So we really think that that is -- that justifies, you  
21 know, at a minimum, the benchmark. We think it actually might  
22 even justify an upward departure, but we're not asking for  
23 that. We're just asking for that. And on the lodestar  
24 cross-check, we think that's -- it's very reasonable and it's  
25 well within the presumptively acceptable range.

1           **THE COURT:** Ms. Cheung, anything you want to add?

2           **MS. CHEUNG:** Nothing in addition to the response we've  
3 already filed, Your Honor.

4           **THE COURT:** Okay. Well, I do think that this is a  
5 fair, reasonable, and adequate settlement; and I think the  
6 service award, it's an explanation to justify the high end of  
7 incentive awards. So I think the 10,000 is also appropriate.  
8 The costs are what they are, the 211,000 and change.

9           And I think the fees -- the benchmark is kind of our  
10 starting point, and I do think in this case that it was  
11 actively litigated. And as I've indicated now a couple times,  
12 this was a challenging case for the plaintiffs, and I think  
13 they did a good job. So I'm prepared to go ahead and approve  
14 the settlement.

15           So you gave me a proposed order.

16           **MR. RUDOLPH:** Yes.

17           **THE COURT:** And I'll go back again and perhaps reserve  
18 the right to tweak it a bit, but is there anything in there  
19 that datewise needs to be submitted assuming this is the date  
20 of final approval?

21           **MR. RUDOLPH:** I don't know that there are any dates  
22 that need to be filled in. What I will say is the parties just  
23 conferred and there are a few minor tweaks that we'd like to  
24 make, and we can commit to submitting that to you by tomorrow.

25           **THE COURT:** Okay.

1           **MR. RUDOLPH:** Okay.

2           **THE COURT:** Good.

3           All right. Very well. Thank you.

4           **MR. RUDOLPH:** Thank you, Your Honor.

5           **MS. CHEUNG:** Thank you, Your Honor.

6                   (Proceedings adjourned at 2:05 p.m.)

7                           ---oOo---

CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript  
from the record of proceedings in the above-entitled matter.

DATE: Monday, April 14, 2025

A handwritten signature in black ink, reading "Kelly Shainline", is written over a horizontal line.

Kelly Shainline, CSR No. 13476, RPR, CRR  
U.S. Court Reporter